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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

06/02/2004

William Squire Esq
Carella Byrne Bain Gilfillan Cecchi
Stewart & Olstein
6 Becker Farm Road
Roseland, NJ 07068

EXAMINER

FUQUA, SHAWNTINA T

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 06/02/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,567	11/20/2000	Bassem M. Demian	176746-2	7505

TITLE OF INVENTION: BUNION TREATING DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$665	\$0	\$665	09/02/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

C mplete and send this f rm, together with applicable fee(s), t : **Mail** **Mail Stop ISSUE FEE**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax **(703) 746-4000**

INSTRUCTIONS: This form should be used for transmitting the **ISSUE FEE** and **PUBLICATION FEE** (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590 06/02/2004

William Squire Esq
 Carella Byrne Bain Gilfillan Cecchi
 Stewart & Olstein
 6 Becker Farm Road
 Roseland, NJ 07068

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

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nonprovisional	YES	\$665	\$0	\$665	09/02/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
FUQUA, SHAWNTINA T	3742	607-072000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1	_____
2	_____
3	_____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent); ☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Director for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Alexandria, Virginia 22313-1450. **DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, Virginia 22313-1450.**

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TRANSMIT THIS FORM WITH FEE(S)



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7590 06/02/2004

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EXAMINER

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PAPER NUMBER

3742

DATE MAILED: 06/02/2004

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 151 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 151 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Applicant(s)

09/716,567

DEMIAN, BASSEM M.

Examiner

Art Unit

Shawntina T. Fuqua

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response received 4/7/04.
2. ☒ The allowed claim(s) is/are 12-21.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 1/7/03.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4/20/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Shawntina Fuqua
Patent Examiner
Art Unit 3742
Shawntina Fuqua

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Cancel claims 1-11 non-elected without traverse in paper dated 9/3/02.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawntina T. Fuqua whose telephone number is (703) 305-2581. The examiner can normally be reached on Monday-Friday 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shawntina Fuqua can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Application/Control Number: 09/716,567

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Art Unit: 3742

stf

May 16, 2004


Shawntina Fuqua
Patent Examiner
Art Unit 3742

**EXPEDITED PROCEDURE
AFTER FINAL REJECTION**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Bassem M. Demian
SERIAL NO. : 09/716567
FILED : November 20, 2000
FOR : Bunion Treating Device
EXAMINER : Shawntina T. Fuqua ART UNIT: 3742
ATTORNEY DOCKET: 176746-2 CUSTOMER NO. 27162

DISCLOSURE STATEMENT UNDER 37 CFR 1.56

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is submitted in compliance with 37 CFR 1.56 and is submitted after the mailing of a Final Office Action.

Applicants hereby make of record commonly owned US application Serial No.09/880,633 ('633 application) filed June 13, 2001, which is a CIP of the above-entitled application. In that CIP application, claims similar to, but which differ from the present claims, are rejected over prior art Kenney US Pat. No. 6,456,884 and Ddiamantopoulos et al. US Pat. No. 4,930,504. Others of the claims are deemed allowable. Other references were cited of interest. All of these references are noted in

S/N 09/16567

the attached Notice of References Cited PTO 892 of record in that CIP application.

Enclosed also is a form PTO 1449 and a copy of the cited references.

The '663 application is pending.

It is respectfully requested that the cited references in the enclosed materials be made of record in the instant above-entitled application.

Entry of this paper is respectfully requested.

The Commissioner is authorized to respectfully charge any fee due for this paper and to credit or charge any under or over payments for this paper to deposit account 03-0678.

FIRST CLASS CERTIFICATE

I hereby certify that this correspondence is being deposited today with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450


William Squire

4/16/2004

Date

#2171201

Respectfully submitted,
Bassem M. Demian

By: 

William Squire, Reg. No. 25,378
Attorney for Applicants

Phone: 973-994-700

Fax: 973-994-744

Form PTO-1449 <u>INFORMATION DISCLOSURE STATEMENT</u>				Atty. Docket: 176746-1		Serial No.: 09/716567	
				Applicant: Bassem M. Demian			
				Filing Date: Nov. 20, 2000		Group: 3742	
U.S. PATENT DOCUMENTS							
Examiner Initial	Document Number	Date	Name	Class	Sub-Class	Filing Date	
<i>SH</i> <i>SH</i>	A1	3,650,276	Mar. 21, 1972	Burghela et al.	128	419	
	B1	4,026,301	May 31, 1977	Friedman et al.	128	418	
	C1	4,930,504	June 5, 1990	Diamantopoulos et al.	128	395	
	D1	5,281,219	Jan. 25, 1994	Kallok	607	42	
	E1	5,578,065	Nov. 26, 1996	Hattori et al.	607	46	
	F1	5,674,267	Oct. 7, 1997	Mir et al.	607	72	
	G1	5,992,012	July 13, 1999	Sakano	607	46	
	H1	6,456,884	Sept. 24, 2002	Kenney	607	145	
	I1						
	J1						
K1							
L1							
M1							
FOREIGN PATENT DOCUMENTS							
Examiner Initial	Document Number	Date	Country	Class	Sub-Class	Translation	
	N1					<input type="checkbox"/> Yes <input type="checkbox"/> No	
	O1					<input type="checkbox"/> Yes <input type="checkbox"/> No	
OTHER (Including Author, Title, Date, Pertinent Pages, etc.)							
	P1						
	Q1						
	R1						
	S1						
	T1						
Examiner: <i>Shawntina J. Siqueira</i>				Date Considered: <i>5/17/04</i>			
EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.							

**CARELLA, BYRNE, BAIN, GILFILLAN
CECCHI, STEWART & OLSTEIN**
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700
(973) 994-1744 (FAX)

OPERATOR: Janice S

TIME COMPLETED: _____

EXT. NO.: 524

DATE: May 17, 2004

OUR FILE NO.: 176746-2

NAME

FIRM:

FAX NO.

Ms. Fuqua

PTO

703-746-4941

308-7764

FROM: William Squire

Total Pages Including Transmittal Sheet: 5

COMMENTS: As requested, this is the Disclosure Statement filed April 20, 2004.

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION, OR DO NOT RECEIVE THE NUMBER OF PAGES NOTED, PLEASE CONTACT THE FAX OPERATOR AT (973) 994-1700 (EXT. 211)

CONFIDENTIALITY NOTE: The documents accompanying this telecopy transmission contain information from the law firm of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, which is confidential and/or legally privileged. The information contained in this facsimile is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If the one receiving it is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at once. Thank you.

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